STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM COURT OF APPEALS
(Saad, Cavanagh and Donofrio, J.J.) and (Hoekstra, Griffin and Borrello, J.J.)

JOHN R. JACOBS,

Plaintiff-Appellee,

v

TECHNIDISC, and PRODUCER'S COLOR SERVICES, INC.,

Defendants-Appellees,

and

MICHIGAN MUTUAL INSURANCE COMPANY, n/k/a AMERISURE INSURANCE COMPANY,

Intervenor-Appellant.

Supreme Court No. 128715

Court of Appeals No. 258271

Lower Court No. 91-405664-NO

MARCIA VAN TIL,

Plaintiff-Appellant,

v

ENVIRONMENTAL RESOURCES MANAGEMENT, INC.,

Defendant-Appellee.

/

Supreme Court No. 128283

Court of Appeals No. 250539

Lower Court No. 02-42717-NO

SUPPLEMENTAL BRIEF OF AMICUS CURIAE DIRECTOR OF THE WORKERS' COMPENSATION AGENCY

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Statement of Questions Involved

I. **Will overruling *Sewell v Clearing Machine Co,* 419 Mich 56 (1984) produce practical real world dislocations or undue hardship?**

Plaintiff-Appellant Van Til answers "Yes."

Defendant-Appellee Environment answers: "Yes."

Amicus Curiae Michigan Defense Trial Counsel and Michigan Trial Lawyers Ass'n answers: "Yes."

Amicus curiae Workers' Compensation Law Section and Director of Workers' Compensation Agency answer: "No."

The Court of Appeals did not answer.

The trial court did not answer.

II. **Will overruling *Sewell v Clearing Machine Co,* 419 Mich 56 (1984) adversely affect or impact those who have relied upon *Sewell* in the past?**

Plaintiff-Appellant Van Til answers "Yes."

Defendant-Appellee Environment answers: "Yes."

Amicus Curiae Michigan Defense Trial Counsel and Michigan Trial Lawyers Ass'n answers: "Yes."

Amicus curiae Workers' Compensation Law Section and Director of Workers' Compensation Agency answer: "No."

The Court of Appeals did not answer.

The trial court did not answer.

III. **Does *Sewell V Clearing Machine Co,* 419 Mich 56 (1984) have to be overruled to bestow exclusive jurisdiction on the Workers' Compensation Agency for all questions concerning the Workers' Disability Compensation Act?**

Plaintiff-Appellant Van Til answers "Yes."

Defendant-Appellee Environment answers: "Yes."

Amicus Curiae Michigan Defense Trial Counsel and Michigan Trial Lawyers Ass'n answers: "Yes."

Amicus curiae Workers' Compensation Law Section and Director of Workers' Compensation Agency answer: "No."

The Court of Appeals did not answer.

The trial court did not answer.

IV. **Does MCL 418.827(2) authorize the parties to settle Workers' Compensation claims in Circuit Court and can a Consent Judgment entered in Circuit Court determine Workers' Compensation Rights under the Workers' Disability Compensation Act?**

Plaintiff-Appellant Van Til answers "Yes."

Defendant-Appellee Environment answers: "Yes."

Amicus Curiae Michigan Defense Trial Counsel and Michigan Trial Lawyers Ass'n answers: "Yes."

Amicus curiae Workers' Compensation Law Section and Director of Workers' Compensation Agency answer: "No."

The Court of Appeals did not answer.

The trial court did not answer.

Statement of Facts

Amicus Curiae, Director of the Workers' Compensation Agency, adopts the Statement of Facts contained in his primary brief in support of his position in *Van Til v Environmental Resources* and that of Amerisure in *Jacobs v Technidisc, Inc., et al.* In addition, the Director adopts the facts as set forth in the brief submitted by Amicus Curiae State Bar of Michigan, Workers' Compensation Section and its supplemental brief filed after argument.

After oral argument, this Court issued an order on May 12, 2006 directing the parties to file supplemental briefs addressing the likely practical consequences that would result if this Court were to overrule *Sewell v Clearing Machine Co.*[1] The briefs were to discuss the factors a court should consider before overruling a prior decision as set forth in *Robinson v City of Detroit.*[2] In particular, the court asked the parties to discuss (1) the effect of overruling *Sewell*, on reliance interests and whether overruling would work an undue hardship because of those interests, and (2) whether overruling *Sewell*, would produce, not just readjustments but, practical real-world dislocations.

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[1] *Sewell v Clearing Machine Co*, 419 Mich 56; 347 NW2d 447 (1984).
[2] *Robinson v City of Detroit*, 462 Mich 439, 464; 613 NW2d 307 (2000).

Argument

I. Overruling *Sewell v Clearing Machine Co* will not produce practical real world dislocations or undue hardship.

A. Overruling *Sewell* will end the confusion for the bench and the bar as to where the question of an employee/employer relationship is to first be decided.

This Court has asked the parties and amici curiae to address the issue of the practical result of having a case, once litigation commences in circuit court, referred to the Board of Magistrates for determination of the fundamental question — is there an employee/employer relationship between the parties in the circuit court litigation. It was suggested at argument that a referral of this nature would cause untoward problems in tort litigation across the State.

The Director answers that this is simply not true. If *Sewell* were overruled, the Director suggests the confusion in regards to this issue would end. An application for hearing would be filed in the Workers' Compensation Agency (WCA) and the issue joined. A magistrate, the Worker's Compensation Appellate Commission (WCAC) and ultimately the courts would all have an opportunity to review the question.[3] A single forum, a single appellate process and consistent decisions at each level will produce the practical result of reducing the actual cost and amount of time spent in the litigation for the parties and the courts.

B. Overruling *Sewell* will not produce real world dislocations.

The Court has also asked the parties to address the effect such a decision would have on reliance interests and whether it would produce not just re-adjustments but practical real-world dislocations. This Court defined the kind of reliance interests that should be considered when

[3] If a statute of limitations issue should arise, a request for a declaratory judgment seeking a tolling of the statute of limitations could be commenced while the primary question is decided by the WCA. MCR 2.605.

stare decisis is an issue or there is a move to overrule prior decisions. In *Robinson v City of Detroit,* the majority said[4]:

> As to the reliance interest, the Court must ask whether the previous decision has become so embedded, so accepted, so fundamental, to everyone's expectations that to change it would produce not just readjustments, but practical real-world dislocations. [Footnote omitted.]

The Court explained in footnote 26[5] that in some situations the reliance is so great that even if wrongly decided, to overrule such cases would create so much turmoil in a society's structure that overruling these decisions would wreak chaos in the conduct of business or government or a citizen's behavior with an effect akin to a tsunami's destructive force. This simply would not be the result if *Sewell* were overruled. Instead, if the statutory language was faithfully followed as to where a determination of the employee/employer relationship was to be decided, there would be no dislocation of rights, remedies or responsibilities but rather an immediate application of relief.

If all parties in the case at bar had understood that the question of the employment status must be presented to the WCA, as all did prior to *Sewell* deference would have been given to the WCA for that determination. Upon a determination from a magistrate, either party could have appealed. The appeal would be to the WCAC which would review the facts and if supported by competent, material and substantial evidence, be found conclusive by the WCAC.[6] Upon decision, either party could appeal to the Court of Appeals and this Court, upon leave granted, on questions of law.[7] Significantly, had the magistrate found that Mrs. Van Til was an employee, under whatever theory was proposed, Mrs. Van Til would have immediately been eligible for

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[4] *Robinson v City of Detroit*, 462 Mich at 466 (2000).
[5] *Robinson v City of Detroit*, 462 Mich at 466, fn 26.
[6] MCL 418.861a(3).
[7] MCL 418.861a(14).

workers' compensation benefits, including wage loss, medical and attendant care, if necessary. All of these benefits would be available to her throughout the appeal process, even under the extraordinary circumstances of an order being entered awarding her benefits and her appeal to deny same[8]. Instead, the very "real world result" that occurred for Mrs. Van Til after the circuit court decision was that she received nothing — no benefits, no medical care, no compensation, while this matter has been on appeal.

Overruling *Sewell* would provide a much quicker response to those litigants who are found to be an employee. Assuming the injury arose out of that employment, benefits will immediately be available to them even while the question is on appeal. Because of *Sewell,* however, and because circuit court has concurrent jurisdiction, Mrs. Van Til was not eligible for any recompense while the question surrounding her action has been debated.[9]

C. Overruling *Sewell* will reduce duplication of litigation.

Another practical result of the circuit court having concurrent jurisdiction over this "fundamental issue"[10] is that all issues decided in circuit court may again have to be decided before a magistrate. If this Court finds that Mrs. Van Til was an employee, and that she was not an independent contractor as defined in *Reed v Yackell,*[11] or a volunteer, as defined in *Hoste v Shanty Creek,*[12] a referral will undoubtedly be made by this Court to the WCA, as it was in *Reed,* for determination of all the issues raised in circuit court. The practical result is duplication of the same litigation after the parties have already spent more than two years in the appellate courts.

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[8] MCL 418.862(1).
[9] It should be noted that Mrs. Van Til died during this appeal. There is a real question as to whether any benefits will now be available to her under the Workers' Disability Compensation Act if this court refers the matter to the Agency for decision.
[10] *Sewell v Clearing Machine Co,* 419 Mich at 63.
[11] *Reed v Yackell,* 473 Mich 520; 703 NW2d 1 (2005).
[12] *Hoste v Shanty Creek,* 459 Mich 561; 592 NW2d 360 (1999).

The Director suggests that the overall effect of overruling *Sewell* would be one that is cost effective and jurisprudentially sound. Counsel for Appellant Van Til, at oral argument, suggested that such a rule could create a nightmarish result in a situation where there are multiple defendants and one raises a question of employment relationship. The real world practical result, however, is that if a defendant asserts the question of an employee/employer relationship, the Defendant can be compelled to file a petition for determination of rights in the WCA to get an answer to the employment relationship question. The onus and burden of proof that the relationship exists is thus put upon the party who asserts it. This result is not a dislocation, but a re-allocation of responsibility where it should be — within the workers' compensation system, by the party asserting that such a relationship exists — with its liabilities and limitations of liability spelled out very specifically for both parties.

II. Overruling *Sewell* will not adversely affect or impact those who have relied upon *Sewell* in the past if this Court gives only prospective or limited retroactive effect.

Amicus Curiae for the State Bar of Michigan, Workers' Compensation Section has addressed the effect that overruling this Court's decision in *Sewell* may have upon judgments already entered or prior decisions enforced and paid. Counsel for Amicus Curiae Workers' Compensation Section has suggested a method by which that reliance can be contained while overruling *Sewell*. The Director concurs in the approach offered in both the pre- and post-argument briefs submitted by Amicus Curiae Workers' Compensation Section.

The Director agrees that the prospective application and/or limited retroactive application suggested will not create undue hardship for any party currently in litigation or on appeal. Moreover, the re-establishment of exclusive jurisdiction will have the beneficial effect of leading all other litigants to the appropriate forum, the WCA, in the first instance.

Concurrent jurisdiction — regardless of where it rests and regardless of what issues are involved — is an anathema to the legal system generally and has proven, by the very fact of this case, to be troublesome for the workers' compensation area specifically. "Concurrent" means "(1) operating, happening at the same time covering the same matters;[13] (2) having authority on the same matters." Concurrent Jurisdiction" means "jurisdiction exercised simultaneously by more than one court over the same subject matter and within the same territory, with the litigant having the right to choose the court in which to file the action.[14] What could wreak more hardship or create more chaos than two tribunals exercising control over the same parties and the same issues in two separate forums? Since *Sewell* does not prohibit either party from availing themselves of both forums at the same time, one can only imagine the turmoil that would be created to the jurisprudence of this State if each forum comes to diametrically opposed results with parallel appellate processes but different standards of review in the appeal process. Moreover, as was noted by Justice Corrigan in her dissent in *Reed*[15]:

> But *Sewell's* shared jurisdiction paradigm implicates other prudential concerns, quite apart from the absence of judicial authority to negate the legislative scheme. Specifically, it fails to accord the proper deference to agency expertise, and thwarts the goal of consistent and uniform decisions by the WCB.

The possibility of inconsistent decisions should be a sufficient enough reason to overrule *Sewell.* Overruling *Sewell* will not work or create undue hardships if this Court adopts the approach of prospective application of the concept that the WCA is the exclusive forum in which questions concerning the Workers' Disability Compensation Act (WDCA) should be answered. Nor would such a decision produce re-adjustments or dislocations in regard to all judgments,

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[13] Black's Law Dictionary, 7th Ed (1999), p 286.
[14] Black's Law Dictionary, 7th Ed (1999), p 855.
[15] *Reed v Yackell,* 473 Mich at 556.

settlements or payments pursuant to circuit court and appellate decisions now final. These would remain buried in the archives of the courts and the litigants involved.

There is no doubt, however, that overruling *Sewell* would create a shift in the way in which tort litigation is handled when even the whisper of an affirmative defense alleging an employee/employer relationship occurs. All such litigation, and it is impossible to speculate as to numbers involved, would be and should be directed to the WCA for determination of the question that is the very essence of the WDCA — the employment relationship. Prospective application would ensure an orderly transition while at the same time according due deference to agency expertise and promoting consistent and uniform decisions.

III. *Sewell* does not have to be overruled to bestow exclusive jurisdiction on the Workers' Compensation Agency for all questions concerning the Workers' Disability Compensation Act because the statute was changed in 1985 PA 103 after *Sewell* was decided to provide this very result.

The original workers' compensation act was enacted in 1912 for the purpose of providing just and humane laws to take the place of common law remedies for compensation of workmen who received accidental injuries in the course of their employment.[16] At the time of its enactment, the statute permitted private employers to "opt-in" to the system.[17] If the employer elected to be subject to the act, the statute limited the liability of the employer to the new scheme of payment of compensation to employees for injuries sustained in the course of employment.[18] Employees, on the other hand had to "opt-out" of the system.[19] The election had to be made at the time of entering into a contract of hire with the employer or within 30 days after the

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[16] 1912 (1st Ex Sess) PA 10.
[17] Public employers were presumed to be employers under the act and were not given the choice to elect to come under its provisions. 1912 (1st Ex Session), Part I, § 5.
[18] 1912 (1st Ex Session), Part I, § 6.
[19] 1912 (1st Ex Session), Part I, § 8.

employer had filed its election with the Industrial Accident Board.[20] If the employee did not opt-out, he was deemed to have accepted and be bound by the provisions of the act.[21]

Part III of the Act of 1912 provided for a procedure for resolution of claims. An Industrial Accident Board was created.[22] If no agreement was reached between the employee and the employer or its insurance company, a committee of arbitrators was formed to make inquiries, hold hearings and issue a decision.[23] If no claim for review was filed, it became the final decision.[24] Section 16 of the act squarely established that *all questions arising under the act* were to be determined by the Industrial Accident Board[25]:

> Sec. 16. *All* questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise provided therein, be determined by the industrial accident board. [Emphasis added.]

Act 10 of 1912 also provided that if compensation was sought under the act by an employee or his dependents or if payments were made by the employer or if a question was submitted to arbitration, these actions constituted a release by the employee to the employer of all claims arising from the injury sustained.[26]

In 1915 several amendments were made to the act. However, workers' compensation remained an "opt-in" program for private employers. 1915 PA 171 added two deputy commissioners to assist the board in hearing cases. Section 16 of the 1912 Act was not

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[20] 1912 (1st Ex Session), Part I, § 8(2)
[21] 1912 (1st Ex Session), Part I, § 8(1) and (2).
[22] 1912 (1st Ex Session), Part III, § 1.
[23] 1912 (1st Ex Session), Part III, § 6.
[24] 1912 (1st Ex Session), Part III, § 8.
[25] 1912 (1st Ex Session), Part III, § 16.At this point in history, not all employers were covered by the act, only those who opted-in were, thus not all questions concerning an employment relationship would be determined by the Industrial Accident Board, rather only those questions arising under the act involving employers who had elected to be subject to the act and employees who had not "opted out" of the act would be heard and determined by the Industrial Accident Board.
[26] 1912 (1st Ex Session), Part IV, § 1.

amended, however, and still provided that all questions arising under the act, if not settled by the parties, were to be determined by the board. More amendments were made to the act in 1921, 1929 and 1937 but none involved a change to where questions arising under the act were to be determined.[27]

In 1943, the whole system of workers' compensation changed. 1943 PA 245 provided for the first time that *all* employers, public and private, unless specifically exempted, were now subject to the act. 1943 PA 245, Part 1, § 2 provided:

> On and after the effective date of this section, every employer public or private, and every employe, unless herein specifically provided, *shall* be subject to the provisions of this act and *shall* be bound thereby. [Emphasis added.]

For the first time, the language "any controversy concerning compensation" appeared in the act. 1943 PA 245, Part III, § 6 provided:

> Sec 6. Any controversy concerning compensation shall be submitted to the compensation commission. Neither the payment of compensation nor the accepting of the same by the employe or his dependents, nor the signing of receipts therefore, shall be considered as a determination of the rights of the parties under this act.

Other amendments in the 1943 statute established the duties of the WCA much as we know it today, but the directive in section 16 was still that "all questions arising under the act" were to be determined now by the compensation commission.[28] Even in 1943 the Legislature clearly intended that the scope of questions to be decided by the commission included *all* questions arising under the act, not just controversies concerning compensation. In 1947 PA 357, the compensation commission was abolished and the Department of Workmen's Compensation was created.

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[27] In 1921 PA 43, the compensation commission was created.
[28] 1943 PA 245, Pt III, section 16.

From 1948 to1966, sections 6 and 16 of Part III of the 1912 Act retained the same language.[29] However, in 1967 PA 284, section 16 was changed:

> Sec.16. (1) All questions arising under this act shall be determined by the workmen's compensation department.
>
> (2) The department shall be deemed to be an interested party in all workmen's compensation cases in questions of law.

For the first time, the Department of Workmen's Compensation was an interested party in all questions of law under the act and the department was now the arbiter of "all questions arising under the act". This language remained in the statute until 1969 when the act was revised and enacted as the Workmen's Compensation Act of 1969.[30] In this revision, the bureau of workmen's compensation was created along with the position of director.[31] The two sections concerning controversies or questions under the act were consolidated into section 841 of 1969 PA 317 which provided:

> Sec. 841. Any controversy concerning compensation shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau. The director shall be deemed to be an interested party in all workmen's compensation cases in questions of law.

It is this language that was in effect when *Sewell* was decided on May 3, 1984.

Approximately 14 months later, on July 30, 1985, the Legislature made massive changes to the entire workers compensation scheme in 1985 PA 103. Included in 1985 PA 103 was the abolition of hearing referees and the creation of the Board of Magistrates, § 213; the abolition of the Workmen's Compensation Appeals Board and the creation of the Worker's Compensation

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[29] See sections 413.6 and 413.16 of the Compiled Laws of 1948. The language in section 6, Part III of the Compiled Laws of 1948 provided in pertinent part: "Any controversy concerning compensation shall be submitted to the compensation commission." The language in section 16, Part III provided in pertinent part: " All questions arising under this act, if not settled by the agreement of the parties interested therein, shall, except as otherwise provided herein, be determined by the industrial accident board."

[30] 1969 PA 317.

[31] 1969 PA 317, § 201.

Appellate Commission, § 274; and the creation of a Qualifications Advisory Committee, § 209 among others. It was a huge change impacting how work was to be done in the Bureau of Worker's Disability Compensation. Most importantly, however, § 841 of the act was significantly changed. First, Act 103 added subsections 2-10 dealing with the small claims proceedings, new to the statute. Secondly, and pertinent to this discussion, section 841(1) was amended to read as follows:

> Sec. 841. (1) *Any dispute* or controversy concerning compensation *or other benefits* shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau or a worker's compensation magistrate, as applicable. The director *may* be an interested party in all worker's compensation cases in questions of law. [Emphasis added.]

The operative words within the 1985 PA 103 § 841 are "any dispute" and "or other benefits". "Any dispute" is particularly meaningful when you compare it with this court's analysis in *Sewell.* The Court phrased the question before it as being[32]:

> The issue before us today is whether, in an action in a circuit court seeking damages for personal injury, the circuit court has jurisdiction to decide whether the defendant is the plaintiff's employer and thus able to invoke the exclusive remedy provision of the Worker's Disability Compensation Act. [Citations omitted.]

The Court in *Sewell* went to great lengths to distinguish between those questions that remained solely within the province of the bureau and those questions which could also be decided by a court. The Court concluded that "fundamental" questions could be decided by a court. One of those "fundamental" questions was whether the defendant was the employer of the plaintiff.

It does not require a leap of faith to suggest that in 1985 when the Legislature amended section 841 that it did so in response to *Sewell.* The court's opinion had concluded that only "non-fundamental" questions were exclusively within the bureau's jurisdiction and that the

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[32] *Sewell v Clearing Machine Co,* 419 Mich at 57.

circuit courts had jurisdiction to "decide the more "fundamental issue of whether plaintiff was an employee."[33] It simply cannot be denied that the language inserted by the Legislature in 1985 invalidated the *Sewell* decision. The Legislature did not say "only non-fundamental" disputes are to be determined by the bureau or a magistrate; the Legislature did not say only those disputes raised after the threshold question — employee/employer status — is decided shall be submitted to the Bureau for determination. Rather the Legislature directed that *any dispute* shall be submitted to the bureau *and all questions* under the act shall be determined by the department or a magistrate as applicable. Recognition of this change in the statute in 1985 PA 103 should guide this court and alleviate concerns expressed about the application of *stare decisis* in this case. In *Robinson,* the majority opinion notes that citizens generally rely on the statutory language itself to direct their actions. It is the statute to which citizens look to know in advance the rules of society. As so aptly stated by Justice Taylor when speaking for the Court[34]:

> In fact, should a court confound those legitimate citizen expectations by misreading or misconstruing a statute, it is that court itself that has disrupted the reliance interest. When that happens, a subsequent court, rather than holding to the distorted reading because of stare decisis, should overrule the earlier court's misconstruction. The reason for this is that the court in distorting the statute was engaged in a form of judicial usurpation that runs counter to the bedrock principle of American constitutionalism, i.e., that the lawmaking power is reposed in the people as reflected in the work of the Legislature, and . . . the courts have no legitimacy in overruling or nullifying the peoples representatives.

If, when considering the effect of *stare decisis*, it is the court's duty to return the law to what the citizens thought the statute meant at enactment, it cannot be any less this Court's duty to take note of legislative changes made subsequent to the decision under review.[35] It is also this

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[33] *Sewell v Clearing Machine Co,* 419 Mich at 62.
[34] *Robinson v City of Detroit,* 462 Mich at 467.
[35] *Robinson v City of Detroit,* 462 Mich at 468.

Court's duty to give meaning to every word, phrase and clause in a statute, lest a portion of the statute as written be rendered a nullity.[36]

The Legislature has provided a new slate for determination of whether the WCA has exclusive or concurrent jurisdiction with a circuit court to decide any dispute or controversy concerning compensation or other benefits and whether all questions arising under the act should be determined by the bureau or a worker's compensation magistrate as applicable.[37] Whatever *Sewell* permitted or did not permit is no longer significant. The Legislature has directed that any dispute, whether of first importance or last importance, shall be submitted to the bureau and all questions under the act be shall determined by the bureau or a magistrate. It just can't be any more straightforward than that.

While the Director has previously argued that *Sewell* should be overruled, it is apparent that this Court can, without violation of the principle of *stare decisis,* interpret for the first time the new language in the act and come to the conclusion that the WCA has primary and exclusive jurisdiction to determine the issue of Mrs. Van Til's employment status pursuant to §§161 or 171 of the WDCA. This question is one which clearly arises under the act and should be determined by a magistrate of the WCA. The tangential issue of whether *Sewell* should be overruled need not be addressed.

IV. MCL 418. 827(2) does not authorize the parties to settle workers' compensation claims in circuit court and even a consent judgment entered in circuit court cannot determine a workers' compensation rights under the Workers' Disability Compensation Act.

Intervenor-Appellant Michigan Mutual Insurance Company n/k/a Amerisure Mutual Insurance Co filed a post-argument motion and brief explaining why the language in MCL 418.827(2) does not provide statutory authority for settling worker's compensation claims

[36] *Reed v Yackell,* 473 Mich at 537.
[37] MCL 418.841(1).

in circuit court, and why a consent judgment in circuit court cannot determine worker's compensation rights. The Director supports Michigan Mutual/Amerisure's position on both of these issues.

MCL 418.827 of the WDCA sets out the procedures to be followed when a third-party case exists in addition to the worker's compensation action. Section 827(2) states: "Prior to the entry of judgment, either the employer or carrier or the employee or the employee's personal representative may settle their claims as their interest shall appear and may execute releases therefore." This does not authorize the circuit court to settle worker's compensation cases. As Michigan Mutual/Amerisure points out on pages 2-3 of its brief, section 827(2) does not say where the claims it refers to are to be settled.

There is nothing in the WDCA that transfers the specific jurisdiction granted to the WCA over worker's compensation redemptions and settlements to another court. In fact, sections 835-837 of the Act provide the method and means for settlement of worker's compensation claims at the WCA, not circuit court. Section 835(1) states: "After 6 months' time has elapsed from the date of a personal injury, any liability resulting from the personal injury may be redeemed by payment of a lump sum by agreement of the parties, subject to the approval of a worker's compensation magistrate." [Emphasis added.] Section 837(1) states: "All redemption agreements and lump sum applications filed under the provisions of section 835 shall be approved or rejected by a worker's compensation magistrate." [Emphasis added.] The Court in *Chrysler v Workers' Compensation Appeal Board*[38] acknowledged these statutorily-mandated requirements regarding resolution of worker's compensation cases. "When . . . the parties agree

[38] *Chrysler v Workers' Compensation Appeal Board,* 174 Mich App 277, 281; 435 NW2d 450 (1988).

to redeem workers' compensation obligations by a lump sum settlement, the proposed redemption agreement must be submitted by hearing to a referee for approval."

Assuming *arguendo* that the language of Section 827(2) is general and ambiguous (as suggested by questions at argument in this case), the other sections of the worker's compensation statute are not. When parts of the same statute involve basically the same subject matter, and some are specific while another is general and/or ambiguous, the specific statutory language controls.[39]

The WDCA is specifically designed to deal with workplace injuries. Its purpose and history are described in this Court's decision in *Cain v Waste Mgt, Inc (After Remand)*[40]:

> When, in special session, the Legislature in 1912 passed that first act, known as Michigan's "Workmen's Compensation Act," it was the culmination of the efforts of the five-person Employers' Liability and Workmen's Compensation Commission appointed by Governor Chase S. Osborn in 1911. The commission had been formed because of what was described at the time as "wide dissatisfaction" with the employer's liability at common law for injuries suffered by his employees. . . . In its report, the commission, after concluding that the existing negligence-based system (1) failed to sufficiently encourage prevention of accidents, (2) did not protect employers against excessive verdicts, (3) resulted in inadequate compensation for injured workers, and (4) engendered animosity and strife[.] [Citations omitted; footnotes omitted.] [Emphasis added.]

Through the years, with the various adaptations, the purpose of the WDCA remained the same – to provide employees and employers a forum to resolve compensation issues for work-related injuries, regardless of fault. In exchange for "this almost automatic liability, employees are limited in the amount of compensation they may collect from their employer, and, except in limited circumstances, may not bring a tort action against the employer."[41] It is a special system, with a special purpose. To allow the circuit court to take over important aspects of workers' compensation cases, i.e., determination of whether an employee-employer relationship exists,

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[39] *Saylor v Kingsley Area Emergency Ambulance Service*, 238 Mich App 592, 597; 607 NW2d 112 (1999).
[40] *Cain v Waste Mgt, Inc (After Remand)*, 472 Mich 236, 247-248; 697 NW2d 130 (2005).
[41] *Clark v United Technologies Automotive, Inc*, 459 Mich 681, 687; 594 NW2d 447 (1999).

and determination of the appropriate amount of settlement for a worker's compensation case, would be to undo the Legislative intent, and essentially put work injury claims back in the tort system.

Further, as Michigan Mutual/Amerisure states on page 3 of its brief, the State has an interest in making sure that worker's compensation cases are overseen with the idea of protecting the workers' interests, and future well-being. Section 836 of the WDCA sets out a series of detailed rules and requirements the magistrates must follow in considering whether a redemption should be approved. This protection, for the employer as well as the employee, is lost if the worker's compensation case is finalized by the circuit court.

The importance of the expertise of the WCA to deal with worker's compensation cases is illustrated by the consent judgment entered in the *Jacobs* case by the Oakland County Circuit Court. The consent judgment contained errors and omissions, relative to the worker's compensation claim. The final paragraph reads as follows:

> IT IS FURTHER ORDERED AND ADJUDGED that, subsequent to the entry of this Consent Judgment, Plaintiff, John R. Jacobs shall receive future worker's compensation benefits in the amount of Two Hundred Eleven dollars [$211.00] per week for a period of eight hundred forty-three [843] weeks and shall thereafter be paid the full weekly amount of worker's compensation benefits as required by the Worker's Disability Compensation Act, MCLA 418.401 et.seq., by Michigan Mutual Insurance Co. [Emphasis added.]

The circuit court judge cited an incorrect, inappropriate portion of the WDCA in the consent Judgment. MCL 418.401 *et. seq.* deals with occupational diseases and disablements, and does not address specific event injuries like Mr. Jacob's, or benefits, or deal with benefit rates. Further, the consent judgment entered in the *Jacobs* case did not provide for statutorily mandated coordination of claimant's benefits when he reached the age to collect old-age Social Security benefits. As Michigan Mutual/Amerisure pointed out on page 8 of its brief, this Court held in *Clifford v Clifford* that "entry of a consent judgment which, in part, does violate the law must be

corrected."[42] In this case the consent judgment should be vacated and the case referred to the WCA for resolution of the worker's compensation issues.

Finally, the Director also concurs with Michigan Mutual/Amerisure's argument, on pages 4-6 of its brief that, interpreted in the most logical way, the phrase "settle their claims" in Section 827 does not refer to the worker's compensation case at all. Instead it refers to issues in the third party case, and resolution of various claims (for example costs of recovery, issues about loss of consortium, and attorney fees) prior to "entry of judgment" in the third party case.[43]

There is nothing in Section 827 that refers to resolution of the worker's compensation case as one of the "claims" in the third party case. The procedure and forum for settling a worker's compensation case are specifically set out in the WDCA. Redemptions and settlements of worker's compensation claims including the amount to be paid each week are to take place through the WCA, not the circuit court.[44]

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[42] *Clifford v Clifford*, 434 Mich 480, 481; 453 NW2d 675 (1990).
[43] *Lone v Esco Elevators, Inc*, 78 Mich App 97, 105; 259 NW2d 869 (1977); *Mannienen v Warner & Swasey Co*, 80 Mich App 253, 256-257; 263 NW2d 341 (1978).
[44] MCL 418.835; MCL 418.836; MCL 418.837.

Conclusion

Overruling *Sewell* will not produce harsh, real world dislocations or hardships. Any problems that may occur due to reliance on that decision can be contained by applying this decision prospectively only. However, it is not necessary to overrule *Sewell* if faithful interpretation is given to the language of the statute enacted after *Sewell* was decided. The current statute clearly directs that 'any dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions, including the question of employment status, shall be determined by the bureau or the magistrate as applicable. The question of Mrs. Van Til's employment status should have been referred for determination to the WCA once the question of that status was raised.

Additionally, the question of how much compensation is owed by a carrier or an employer falls clearly within the language of section 841 of the WDCA. As such, the determination of the amount that Mr. Jacobs is eligible to receive rightfully belongs with the WCA, not the circuit court. Settlement of workers' compensation claims are made by the WCA, not circuit court. A final decision, including the amount of compensation that should be paid, can only be made by a magistrate in accordance with all the appropriate provisions of the act. The Circuit Court Order in *Jacobs* should be reversed.

Relief

Amicus Curiae Director of the Workers' Compensation Agency, respectfully requests that this Court vacate the opinion of the Court of Appeals in *Van Til v Environmental Resources Mgt, Inc*, unpublished opinion of the Court of Appeals, (Docket no 250539, dec'd Feb 10, 2005) and refer this matter to the Workers' Compensation Agency for submission to the Board of Magistrates.

The Director further requests that *John R Jacobs v Technidisc, Inc. et al*, be remanded to the circuit court with instructions that the matter pending before the Workers' Compensation Agency should be continued, that any decision from that Agency be given controlling effect, that the circuit court's order enforcing its prior order be reversed and vacated.

Respectfully submitted,

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